

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #12	CCRB Case #: 201605561	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 06/19/2016 1:55 AM	Location of Incident: Staten Island Ferry	Precinct: 120	18 Mo. SOL 12/19/2017	EO SOL 12/19/2017	
Date/Time CV Reported Sun, 06/19/2016 4:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/27/2016 11:17 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM John Panik	02510	955292	PBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Stephen Machicote	30062	954084	PBSI

Officer(s)	Allegation	Investigator Recommendation
A.POM John Panik	Force: Police Officer John Panik used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On June 19, 2016, Duty Captain Clifford called IAB and reported a prisoner injury. The complaint was referred to the CCRB and was received on June 27, 2016.

On June 19, 2016, at approximately 1:55 a.m., § 87(2)(b) was on the Staten Island Ferry which docked at the Whitehall Terminal in Manhattan. PO John Panik and PO Stephen Machicote, from Patrol Borough Staten Island's Ferry unit, cleared the Staten Island Ferry of passengers. While the officers escorted § 87(2)(b) off the ferry, § 87(2)(b) threw his hat at PO Panik's face. PO Panik then punched § 87(2)(b) once in the face causing a fractured orbital socket and a laceration above his eye (**Allegation A**). § 87(2)(b) was placed under arrest for § 87(2)(b) (01 Board Review).

Internal Affairs Bureau Group 54 has an open investigation regarding this incident. As of September 14, 2016, IAB's case is still open. According to Sgt. John Addeo, the Group 54 investigating officer assigned the case, PO Panik has been reassigned to administrative duty.

Video footage of this incident was obtained from surveillance cameras on the Staten Island Ferry and at the Whitehall Terminal in Manhattan. The video does not have audio (**02 Board Review and 03 Board Review**).



201605561_20160817_0844_DM.mp4



2016-09-23_11-02-15.mp4

The investigation consulted with APU Attorney Andre Applewhite for this case.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- A Notice of Claim regarding this incident was filed by § 87(2)(b) on an unspecified date. § 87(2)(b) is claiming assault, battery, excessive force, and false arrest. Compensation has not yet been determined (**04 Board Review**).

- § 87(2)(b)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (**06 Board Review**).
- PO John Panik has been a member of the service for three years and there are no substantiated CCRB allegations against him. PO Panik has one prior allegation regarding the use of physical force, in case no. 201506053, which was exonerated.

Findings and Recommendations

Allegation A: Force- Police Officer John Panik used physical force against § 87(2)(b)

§ 87(2)(b) The video footage shows § 87(2)(b) attempting to walk across the ferry alone. § 87(2)(b) appears intoxicated as he continuously moves side-to-side while walking. During the course of his walk, he falls and stands up twice on his own. § 87(2)(b) then walks down the stairs. PO Panik and PO Machicote follow § 87(2)(b) but do not make any physical contact with him. § 87(2)(b) is then seen standing at edge of the ferry, near the apron that connects the ferry to the terminal. § 87(2)(b) faces the officers and moves his arms on his sides. He takes a step towards PO Panik, takes a step back, and then takes another step towards PO Panik and raises one hand, appearing to point upwards. PO Machicote nudges § 87(2)(b) and § 87(2)(b) moves forward. PO Panik and PO Machicote then grab § 87(2)(b)'s arms and they walk with him onto the apron and off the ferry. Upon doing so, § 87(2)(b) leans over a blue railing on the apron. PO Panik and PO Machicote wait a few steps behind him. PO Machicote approaches § 87(2)(b)'s right side and places his arm around his stomach. § 87(2)(b) turns over to his right, looks at PO Machicote, and PO Machicote retreats his arm. PO Panik also moves over behind § 87(2)(b) and attempts to grab his left arm, but then releases his arm. § 87(2)(b) then turns around and faces the officers. With his right hand, § 87(2)(b) removes a cap from his head and throws it at PO Panik's face. The cap hits the left side of PO Panik's face and falls to the ground. PO Panik punches § 87(2)(b) immediately after in the left side of his face. § 87(2)(b) falls onto the railing. PO Panik grabs § 87(2)(b) from his left arm and brings him to the ground. PO Panik leans down and handcuffs § 87(2)(b) (02 Board Review; 03 Board Review).

§ 87(2)(b) boarded the ferry in Staten Island alone and sat on the bottom floor. He had consumed two cups of alcohol approximately two hours prior to getting on the ferry, but he was not intoxicated. He did not recall what he wore except his hat. When the ferry docked in Manhattan, Staten Island Ferry employees and three officers cleared the ferry of passengers. § 87(2)(b) attempted to explain to the officers that he had difficulty walking due to an old injury to his left foot that makes it difficult for him to walk. § 87(2)(b) was handcuffed but he did not know why. He did not know who handcuffed him and he did not recall when or how he was handcuffed. § 87(2)(b) did not have any physical altercation with the officers prior to or during his handcuffing. § 87(2)(b) never exited the ferry at Manhattan. He remained on the ferry which returned to Staten Island. § 87(2)(b) fell asleep on the ferry and he did not know what happened during the ride. When he woke up, EMS was on scene and he was taken to § 87(2)(b) where he received stitches over his eyebrow. § 87(2)(b) did not know how he sustained his injuries. He was later transported to the 120th Precinct stationhouse and central booking. § 87(2)(b) learned that an officer stated that § 87(2)(b) threw his hat at him, but § 87(2)(b) denied doing so. He was charged with § 87(2)(b) (07 Board Review).

§ 87(2)(b)'s medical records from § 87(2)(b) note that he was brought in due to intoxication and a laceration sustained during an altercation with police officers. The medical records confirm that § 87(2)(b) sustained a 3.5 centimeter laceration above his left eyebrow, which required stitches. Ct-scans to § 87(2)(b)'s head, spine, and facial bones were also performed. He

was diagnosed with two orbital fractures, facial swelling, and a possible nasal bone fracture (**See Privileged Documents**).

§ 87(2)(b) and § 87(2)(b) who work on the Staten Island Ferry, witnessed this incident. § 87(2)(b) and § 87(2)(b) were on the second floor of the ferry and noticed § 87(2)(b) who appeared intoxicated. § 87(2)(b) stated that § 87(2)(b) began walking but fell face first against a pillar. § 87(2)(b) PO Panik, and PO Machicote helped § 87(2)(b) stand up and the officers escorted § 87(2)(b) down the stairs. § 87(2)(b) cleared the second floor of the passengers within a few minutes and then went downstairs. § 87(2)(b) stood approximately 10 to 15 feet away from the officers and § 87(2)(b) § 87(2)(b) was belligerent and threatened the officers by getting in their faces and saying, "Fuck you", "Don't come near me", "Don't touch me," and, "I'll take my time." § 87(2)(b) and PO Panik were standing a few feet apart each other and PO Machicote stood in a triangle, slightly in between PO Panik and § 87(2)(b) § 87(2)(b) did not recall what happened, but guessed that PO Panik tried to grab § 87(2)(b) § 87(2)(b) swung his hat at PO Panik's face and PO Panik punched § 87(2)(b) once in the face. The officers and § 87(2)(b) § 87(2)(b) got on the ground and § 87(2)(b) was handcuffed (**Board Review 08**).

§ 87(2)(b) also went downstairs, but stood approximately 30 to 40 feet away from the officers and § 87(2)(b) He could not hear any statements made by the officers or § 87(2)(b) § 87(2)(b) suddenly stopped, took a step back, removed his hat, and threw it at PO Panik's face. PO Panik then slapped § 87(2)(b) across the face with an open palm. § 87(2)(b) fell to the ground by himself (**Board Review 09**).

PO Panik and PO Machicote also stated that § 87(2)(b) was visibly intoxicated. They first noticed § 87(2)(b) as he first boarded the ferry and he smelled of alcohol, had red eyes, and he yelled and slurred his speech. § 87(2)(b) limped as he walked, but neither officer knew why. When the ferry docked, § 87(2)(b) walked across the ferry and fell twice along the way. PO Panik and PO Machicote approached § 87(2)(b) to assist him, following each fall, but § 87(2)(b) cursed at them stating, "I don't need no help from no fucking NYPD cops," "Fuck you," "Go fuck yourself" and "Fuck the police. Fuck you guys." § 87(2)(b) continued walking but continuously stated that he was not getting off the ferry and that he would get off when he wanted to. PO Panik and PO Machicote walked behind § 87(2)(b) and repeatedly told him that he had to get off the ferry. § 87(2)(b) walked down the stairs and onto the apron which connects the ferry to the terminal end. § 87(2)(b) then approached the railing of the apron, grabbed onto it, and repeated that he was not going to leave. PO Panik and PO Machicote tried to grab § 87(2)(b)'s arms to physically guide him out (**10 Board Review; 11 Board Review**).

PO Panik stated that § 87(2)(b) looked at him and said that he was going to punch him in the face. PO Panik did not recall whether he responded to § 87(2)(b) but he let go of § 87(2)(b)'s arms. The officers repeatedly told § 87(2)(b) that he needed to leave over a span of five minutes. § 87(2)(b) did not comply and repeated his threat to punch PO Panik in the face more than twice. PO Panik did not recall if he responded to this remark. § 87(2)(b) then turned around to face PO Panik and stood approximately two feet away from him. § 87(2)(b) repeated his threat, removed his hat from his head, and threw it at PO

Panik's face. PO Panik then punched § 87(2)(b) once in the face. PO Panik punched § 87(2)(b) in the face because he feared for his and PO Machicote's safety given that § 87(2)(b) threatened to punch him in the face and then threw his hat at him. PO Panik believed that § 87(2)(b) was either going to punch him in the face or use force against him. PO Panik also feared for their safety because he did not know what kind of weapons § 87(2)(b) had in or under his hat, such as razorblades, or whether there were any substances in the hat. § 87(2)(b) fell to the ground and PO Panik and PO Machicote handcuffed him without incident. § 87(2)(b) was placed under arrest for harassment and disorderly conduct for violent and threatening behavior, for threatening to punch PO Panik and then throwing his hat at him. § 87(2)(b) bled from his left eye and an ambulance picked him up at the St. George Ferry terminal and transported him to § 87(2)(b). PO Machicote escorted § 87(2)(b) to the hospital and PO Panik processed § 87(2)(b)'s arrest at the 120th Precinct stationhouse **PO Panik (10 Board Review)**.

PO Machicote stated that § 87(2)(b) repeatedly threatened to fight the officers and "fuck them up." The officers grabbed § 87(2)(b)'s arms, but let go because they did not want to fight with him. § 87(2)(b) released his grip from the railing, faced the officers, and repeated his threats of force. PO Machicote did not hear § 87(2)(b) say that he was going to punch him or PO Panik. PO Panik and § 87(2)(b) faced each other and PO Machicote stood in a triangle and faced § 87(2)(b) then took his hat off and threw it at PO Panik's face. PO Panik punched § 87(2)(b) in the face with a closed fist. § 87(2)(b) fell and landed face down on the ground **(11 Board Review)**.

The TRI report prepared in regards to § 87(2)(b) document that § 87(2)(b) used force against PO Panik by throwing a baseball cap at him. PO Panik used a hand strike against § 87(2)(b) to defend himself. PO Panik did not sustain any injuries. § 87(2)(b) sustained laceration that required sutures **(12 Board Review)**. § 87(2)(b)'s Medical Treatment of Prisoner Report also documents that he was punched in the face during the course of an arrest, causing swelling and a cut to his eye. § 87(2)(b) also complained of an old injury to his leg. § 87(2)(b)'s Prisoner Pedigree Card and Command Log Arrest Entry note his physical/mental condition as "intoxicated" and an "eye laceration during process of arrest" **(13 Board Review)**.

According to Patrol Guide Procedure 221-02, an officer may apply no more than the reasonable force necessary to gain control **(14 Board Review)**.

By all accounts, § 87(2)(b) was intoxicated and did not leave the ferry and terminal when commanded to do so. PO Panik stated that he punched § 87(2)(b) because § 87(2)(b) threatened to punch him and because there could have been razorblades and/or unknown substances in the hat that he threw. § 87(2)(g)

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Squad: **12**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date